

Senate Bill No. 618

Passed the Senate August 4, 1997

Secretary of the Senate

Passed the Assembly July 21, 1997

Chief Clerk of the Assembly

This bill was received by the Governor this ____ day
of _____, 1997, at ____ o'clock __M.

Private Secretary of the Governor

└

CHAPTER ____

An act to amend Section 1195 of the Civil Code, and to amend Sections 8205, 8206, 8207, 8214.1, and 27287 of, and to add Section 8204.1 to, the Government Code, relating to notaries public.

LEGISLATIVE COUNSEL'S DIGEST

SB 618, Watson. Notaries public: duties: proofs of execution: payment of fees: journal and seal.

(1) Existing law relating to the recording of transfers provides that proof of the execution of an instrument, when not acknowledged, may be made by any party executing the instrument, a subscribing witness, or by specified other witnesses. Existing law relating to the duties of county recorders provides that before an instrument can be recorded, its execution shall be acknowledged, as specified, or proved by a subscribing witness or as otherwise specified, except for a grant deed, other than a trustee's deed or deed of reconveyance, mortgage, deed of trust, or security agreement.

This bill would expand this existing exception with respect to grant deeds to also include quitclaim deeds. The bill would provide a form for a proof of execution, but would not preclude the use of other forms that are substantially similar.

(2) Under existing law, the duties of a notary public include to demand acceptance and payment of foreign and inland bills of exchange, or promissory notes, to protest them for nonacceptance and nonpayment, and to exercise any other powers and duties that may be performed by notaries according to specified laws or commercial usages.

This bill would provide that a notary's duty to exercise other powers and duties under the above circumstances shall exist only with regard to the nonacceptance or nonpayment of bills and notes.

(3) Existing law regulating the functions and duties of notaries public specifies the manner in which a notary



shall maintain his or her sequential journal of official acts and official seal, as defined.

Existing law authorizes the Secretary of State to appoint and commission notaries public, as specified, and sets forth the grounds for refusal, revocation, or suspension of a notary's commission by the Secretary of State. Existing law requires the Secretary of State to establish fees to cover the costs of commissioning notaries public and the enforcement of laws governing notaries public.

This bill would require a notary public to keep one active sequential journal of official acts at a time, and the official seal in a locked and secured area, under the direct and exclusive control of the notary, and would further provide that failure to secure the journal or seal shall be cause for the Secretary of State to take administrative action against the commission held by the notary public. The bill would further provide that the journal and seal are the exclusive property of the notary public, and shall not be surrendered to the notary's employer, or any other person, except to the county clerk, or a peace officer, as specified. It would require the notary public to provide the journal for examination and copying, in the presence of the notary public, upon receipt of a subpoena duces tecum or a court order, and would require the notary public to certify copies of portions of the journal, if requested. The bill would also require the notary public to permit inspection and copying of journal transactions by a duly designated auditor or agent of the notary's employer, with respect to transactions that are directly associated with the employer's business purposes. The bill would provide that, upon the employer's request, the notary shall regularly provide copies of transactions that are directly associated with the employer's business purposes.

This bill would also authorize the Secretary of State to cancel the commission of a notary public if a check or other remittance accepted as payment for the application, commission, and fingerprint fee is not paid



upon presentation to the financial institution upon which the check or other remittance was drawn.

The people of the State of California do enact as follows:

SECTION 1. Section 1195 of the Civil Code is amended to read:

1195. (a) Proof of the execution of an instrument, when not acknowledged, may be made any of the following:

1. By the party executing it, or either of them.
2. By a subscribing witness.
3. By other witnesses, in cases mentioned in Section 1198.

(b) Proof of the execution of a grant deed, mortgage, deed of trust, quitclaim deed, or security agreement is not permitted pursuant to Section 27287 of the Government Code, though proof of the execution of a trustee's deed or deed of reconveyance is permitted.

(c) Any certificate for proof of execution taken within this state may be in the following form, although the use of other, substantially similar forms is not precluded:

State of California]]
County of _____]] ss.

On ____ (date), before me, the undersigned, a notary public for the state, personally appeared ____ (subscribing witness's name), personally known to me (or proved to me on the oath of ____ [credible witness's name], who is personally known to me) to be the person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposed and said that he/she was present and saw ____ (name[s] of principal[s]), the same person(s) described in and whose name(s) is/are subscribed to the within and annexed instrument in his/her/their authorized capacity(ies) as (a) party(ies) thereto, execute the same, and that said affiant subscribed his/her name to the within instrument as a witness at the request of ____ (name[s] of principal[s]).



WITNESS my hand and official seal.

Signature _____ (Seal)

SEC. 2. Section 8204.1 is added to the Government Code, to read:

8204.1. The Secretary of State may cancel the commission of a notary public if a check or other remittance accepted as payment for the examination, application, commission, and fingerprint fee is not paid upon presentation to the financial institution upon which the check or other remittance was drawn. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall first give a written notice of the applicability of this section to the notary public or the person submitting the instrument. Thereafter, if the amount is not paid by a cashier's check or the equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. This second notice shall be given at least 20 days after the first notice, and no more than 90 days after the commencement date of the commission.

SEC. 3. Section 8205 of the Government Code is amended to read:

8205. (a) It is the duty of a notary public, when requested:

(1) To demand acceptance and payment of foreign and inland bills of exchange, or promissory notes, to protest them for nonacceptance and nonpayment, and, with regard only to the nonacceptance or nonpayment of bills and notes, to exercise any other powers and duties that by the law of nations and according to commercial usages, or by the laws of any other state, government, or country, may be performed by notaries.

(2) To take the acknowledgment or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of that proof or acknowledgment, endorsed on or attached to the instrument. The certificate shall be signed by the notary public in the



notary public's own handwriting. A notary public may not accept any acknowledgment or proof of any instrument that is incomplete.

(3) To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board. Any deposition, affidavit, oath, or affirmation shall be signed by the notary public in the notary public's own handwriting.

(4) To certify copies of powers of attorney under Section 4307 of the Probate Code. The certification shall be signed by the notary public in the notary public's own handwriting.

(b) It shall further be the duty of a notary public, upon written request:

(1) To furnish to the Secretary of State certified copies of the notary's journal.

(2) To respond within 30 days of receiving written requests sent by certified mail from the Secretary of State's office for information relating to official acts performed by the notary.

SEC. 4. Section 8206 of the Government Code is amended to read:

8206. (a) (1) A notary public shall keep one active sequential journal at a time, of all official acts performed as a notary public. The journal shall be kept in a locked and secured area, under the direct and exclusive control of the notary. Failure to secure the journal shall be cause for the Secretary of State to take administrative action against the commission held by the notary public pursuant to Section 8214.1.

(2) The journal shall be in addition to and apart from any copies of notarized documents that may be in the possession of the notary public and shall include all of the following:

(A) Date, time, and type of each official act.

(B) Character of every instrument acknowledged or proved before the notary.

(C) The signature of each person whose signature is being notarized.



(D) A statement as to whether the identity of a person making an acknowledgment was based on personal knowledge or satisfactory evidence. If identity was established by satisfactory evidence pursuant to Section 1185 of the Civil Code, then the journal shall contain the signature of the credible witness swearing or affirming to the identity of the individual or the type of identifying document, the governmental agency issuing the document, the serial or identifying number of the document, and the date of issue or expiration of the document.

(E) If the identity of the person making the acknowledgment was established by the oaths or affirmations of two credible witnesses whose identities are proven upon the presentation of satisfactory evidence, the type of identifying documents, the identifying numbers of the documents and the dates of issuance or expiration of the documents presented by the witnesses to establish their identity.

(F) The fee charged for the notarial service.

(G) If the document to be notarized is a deed, quitclaim deed, or deed of trust affecting real property, the notary public shall require the party signing the document to place his or her right thumbprint in the journal. If the right thumbprint is not available, then the notary shall have the party use his or her left thumb, or any available finger and shall so indicate in the journal. If the party signing the document is physically unable to provide a thumbprint or fingerprint, the notary shall so indicate in the journal and shall also provide an explanation of that physical condition. This paragraph shall not apply to a trustee's deed resulting from a decree of foreclosure or a nonjudicial foreclosure pursuant to Section 2924 of the Civil Code, nor to a deed of reconveyance.

(b) If a sequential journal of official acts performed by a notary public is stolen, lost, misplaced, destroyed, damaged, or otherwise rendered unusable as a record of notarial acts and information, the notary public shall immediately notify the Secretary of State by certified or



registered mail. The notification shall include the period of the journal entries, the notary public commission number, and the expiration date of the commission, and when applicable, a photocopy of any police report that specifies the theft of the sequential journal of official acts.

(c) Upon written request of any member of the public, which request shall include the name of the parties, the type of document, and the month and year in which notarized, the notary shall supply a photostatic copy of the line item representing the requested transaction at a cost of not more than thirty cents (\$0.30) per page.

(d) The journal of notarial acts of a notary public is the exclusive property of that notary public, and shall not be surrendered to an employer upon termination of employment, whether or not the employer paid for the journal, or at any other time. The notary public shall not surrender the journal to any other person, except the county clerk, pursuant to Section 8209, or to a peace officer, as defined in Sections 830.1, 830.2, and 830.3 of the Penal Code, acting in his or her official capacity and within his or her authority, in response to a criminal search warrant signed by a magistrate and served upon the notary public by the peace officer. The notary public shall obtain a receipt for the journal, and shall notify the Secretary of State by certified mail within 10 days that the journal was relinquished to a peace officer. The notification shall include the period of the journal entries, the commission number of the notary public, the expiration date of the commission, and a photocopy of the receipt. The notary public shall obtain a new sequential journal. If the journal relinquished to a peace officer is returned to the notary public and a new journal has been obtained, the notary public shall make no new entries in the returned journal. A notary public who is an employee shall permit inspection and copying of journal transactions by a duly designated auditor or agent of the notary public's employer, provided that the inspection and copying is done in the presence of the notary public and the transactions are directly associated with the business purposes of the employer. The notary public,



upon the request of the employer, shall regularly provide copies of all transactions that are directly associated with the business purposes of the employer, but shall not be required to provide copies of any transaction that is unrelated to the employer's business. Confidentiality and safekeeping of any copies of the journal provided to the employer shall be the responsibility of that employer.

(e) The notary public shall provide the journal for examination and copying in the presence of the notary public upon receipt of a subpoena duces tecum or a court order, and shall certify those copies if requested.

SEC. 5. Section 8207 of the Government Code is amended to read:

8207. A notary public shall provide and keep an official seal, which shall clearly show, when embossed, stamped, impressed or affixed to a document, the name of the notary, the State Seal, the words "Notary Public," and the name of the county wherein the bond and oath of office are filed, and the date the notary public's commission expires. The seal of every notary public commissioned on or after January 1, 1992, shall contain the sequential identification number assigned to the notary and the sequential identification number assigned to the manufacturer or vendor. The notary public shall authenticate with the official seal all official acts.

A notary public shall not use the official notarial seal except for the purpose of carrying out the duties and responsibilities as set forth in this chapter. A notary public shall not use the title "notary public" except for the purpose of rendering notarial service.

The seal of every notary public shall be affixed by a seal press or stamp that will print or emboss a seal which legibly reproduces under photographic methods the required elements of the seal. The seal may be circular not over two inches in diameter, or may be a rectangular form of not more than one inch in width by two and one-half inches in length, with a serrated or milled edged border, and shall contain the information required by this section.



The seal shall be kept in a locked and secured area, under the direct and exclusive control of the notary. Failure to secure the seal shall be cause for the Secretary of State to take administrative action against the commission held by the notary public pursuant to Section 8214.1.

The official seal of a notary public is the exclusive property of that notary public, and shall not be surrendered to an employer upon the termination of employment, whether or not the employer paid for the seal, or to any other person. The notary, or his or her representative, shall destroy or deface the seal upon termination, resignation, or revocation of the notary's commission.

This section shall become operative on January 1, 1992.

SEC. 6. Section 8214.1 of the Government Code is amended to read:

8214.1. The Secretary of State may refuse to appoint any person as notary public or may revoke or suspend the commission of any notary public upon any of the following grounds:

(a) Substantial and material misstatement or omission in the application submitted to the Secretary of State.

(b) Conviction of a felony or of a lesser offense involving moral turpitude or of a nature incompatible with the duties of a notary public. A conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this subdivision.

(c) Revocation, suspension, restriction, or denial of a professional license, if the revocation, suspension, restriction, or denial was for misconduct, dishonesty, or any cause substantially relating to the duties or responsibilities of a notary public.

(d) Failure to discharge fully and faithfully any of the duties or responsibilities required of a notary public.

(e) When adjudged liable for damages in any suit grounded in fraud, misrepresentation, or violation of the state regulatory laws or in any suit based upon a failure to discharge fully and faithfully the duties as a notary public.



(f) The use of false or misleading advertising wherein the notary public has represented that the notary public has duties, rights, or privileges that he or she does not possess by law.

(g) The practice of law in violation of Section 6125 of the Business and Professions Code.

(h) Charging more than the fees prescribed by this chapter.

(i) Commission of any act involving dishonesty, fraud, or deceit with the intent to substantially benefit the notary public or another, or substantially injure another.

(j) Failure to complete the acknowledgment at the time the notary's signature and seal are affixed to the document.

(k) Failure to administer the oath or affirmation as required by paragraph (3) of subdivision (a) of Section 8205.

(l) Execution of any certificate as a notary public containing a statement known to the notary public to be false.

(m) Violation of Section 8223.

(n) Failure to submit any remittance payable upon demand by the Secretary of State under this chapter or failure to satisfy any court ordered money judgment, including restitution.

(o) Failure to secure the sequential journal of official acts, pursuant to Section 8206, or the official seal, pursuant to Section 8207.

SEC. 7. Section 27287 of the Government Code is amended to read:

27287. Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Sections 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Sections 2952, or 2963, of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or is a claim of lien, as provided in Section 3084 of the Civil Code, or a notice of completion, as provided in Section 3093 of the Civil Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if

executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or, except for any quitclaim deed or grant deed other than a trustee's deed or a deed of reconveyance, mortgage, deed of trust, or security agreement, proved by subscribing witness or as provided in Sections 1198 and 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed by law.



Approved _____, 1997

Governor

